IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 36 OF 2004
IN
WRIT PETITION NO. 3691 OF 1996.

Shri Machindra Bappurao Sonavane,]
Jamble Chawl, Room No.2, Keshaw Nagar,]
Chinchwad, Pune - 33.] .. Appellant
(Ori. Petnr.)

Vs

Tata Engineering & Locomotive Co.Ltd.,]
Chinchwad, Pune - 33.] .. Respondent
(Ori.Respdt.)

Shri R.S. Kulkarni, senior counsel i/b Shri Abhay Kulkarni for the appellant.

Shri C.U. Singh with Shri K.S. Bapat i/b Haresh Mehta & Co. for the respondent.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: 8TH JUNE, 2005.

ORAL JUDGMENT: [Per Khandeparkar, J.]

1. Heard.

2. Perused the records.

3. The Appeal arises on the judgment dated 15th of December 1997, passed in Writ Petition No. 3691 of 1996. By the impugned judgment and order, the Petition filed by the appellant was dismissed.

4. The appellant's services with the respondent came to be terminated by order dated 28th June, 1989. The order of termination reads thus:

> "We have decided to put an end to your contract of service with us. Accordingly, your services shall stand terminated with immediate effect. You are being paid one month's wages in lieu of Notice and Retrenchment Compensation at the rate of 15 days wages per year of your service under Sec.25(F) of the Industrial Disputes Act, 1947. In addition, one month's wages (including all allowances) in lieu of Notice under Clause 23(4) of the Model Standing Orders is also being paid to you. A statement of money due to you is enclosed and we are enclosing herewith Demand Draft Nos.1257/26794 & 1263/26799 dated 19.6.1989 for Rs.25817.08 & 683.20 in your favour for the total amount due.
>
> A note as required under Standing Order No.23(4-A) has been recorded giving the reasons for your termination.
>
> Your other legal dues would be paid to you on your completing the clearance formalities as per practice."

The said order was supported by the reasons recorded in writing by the Deputy General Manager of the respondent, a copy of which is to be found at pages 156 and 157 of the Petition. The said termination was sought to be disputed by filing a Complaint under section 28 of the MRTU & PULP Act by the appellant being Complaint No.165 of 1989 which came to be dismissed by the Labour Court,

Pune, on 28th May, 1993. The Revision Application No.55 of 1993 against the said order filed by the appellant came to be dismissed by the Industrial Court, Pune, on 9th April, 1996. The appellant thereupon preferred the said Writ Petition No. 3691 of 1996 which came to be dismissed by the impugned order holding that both the Courts below have arrived at concurrent findings on the aspect of termination of services of the appellant. The impugned order also recorded that it was an order of simple termination of service with reasons recorded by the respondent in accordance with the statutory provisions which disclosed the Management having taken into consideration the unreasonable absence of the appellant for a considerably long period.

5. Placing reliance in the decision in the matter of **Management of Indian Express and Chronical Press Vs. M.C. Kapur,** reported in AIR 1974, S.C., 1629 and, in the matter of **W.M. Agnani Vs. Badri Das & Ors.**, reported in (1963) 1 LLJ, 684, the learned Advocate appearing for the appellant submitted that the learned Single Judge erred in dismissing the Petition, ignoring the fact that the termination was in the nature of punitive action taken against the appellant and that it was apparent from the fact that the order of termination was preceded by a show cause notice issued to the

appellant. He further submitted that inspite of the fact that the show cause notice was issued, no enquiry was conducted and there was no fair opportunity to the appellant to defend the allegations against him and, therefore, the order of termination lacked bonafide and the learned Single Judge having totally ignored the same while rejecting the petition, it has resulted in miscarriage of justice. According to the Advocate for the appellant, once charge-sheet is issued, it was compulsory for the Management to conduct enquiry before taking any action in the form of termination of services of the appellant and the same having not been done before issuing the order of termination to the appellant, the action of termination of the service of the appellant by the Management is to be held as malafide.

6. At the outset, it is to be noted that the decisions sought to be relied upon by the learned Advocate for the petitioner are not at all attracted to the case in hand. They are of no help to the appellant in seeking interference of this Court in the impugned order passed by the learned Single Judge. In the **Indian Express** case (supra), the question which was decided by the Industrial Tribunal was whether the termination of service, which was ordered by the General Manager of the

Company as a result of the report of the Enquiry Officer, was in accordance with the Standing Orders or not. The decision, rather than assisting the appellant, it supports the impugned order.

7. In the case of **W.M. Agnani** (supra), the Tribunal had taken a view that the enquiry in relation to the disciplinary proceedings was required to be restricted to the incident which took place on a particular day and not with reference to the previous conduct of the employee while the High Court had taken a different view. The ruling would perhaps support the view that the incident occurred in the private life of an employee cannot be a cause for disciplinary action against the employee and termination of his services on that ground.

8. In the matter in hand, the order of termination apparently disclosed a simplicitor termination, without attaching any stigma to the appellant. The reasons recorded in support of the termination of services of the appellant reveal that the Management had taken into consideration unreasonable long absence of the appellant from service and on that ground, as the Management was unable to keep the post unfilled for unduly long period, decided to terminate

the services of the appellant.

9. Clause 23 of the Industrial Employment (Standing Orders) Act 1946, undisputedly as applicable to the parties, reads thus:

> "23(1) Subject to the provisions of the Industrial Disputes Act, 1947, the employment of a permanent Workman employed on a rate other than the monthly rate of wages may be terminated by giving him Fourteen days' notice or by payment of Thirteen days' wages (including all admissible allowances) in lieu of notice".
>
> 23(4-A) The reasons for the termination of service of the permanent workman shall be recorded in writing and communicated to him, if he so desires, at the time of discharge, unless such communication, in the opinion of the Manager, is likely, directly or indirectly, to lay any person open to civil or criminal proceedings at the instance of the workman."

The said provision under Clause 23 of the Standing Orders obviously discloses that the services can be terminated by issuing notice and on payment of certain wages for certain period, by recording reasons for the same separately. It is not in dispute that the order of termination which was issued to the appellant was duly supported by the reasons having been separately recorded in writing by the Management. In fact, there does not appear to have been any serious dispute raised at any

point of time in the course of the proceedings, either before the Labour Court or before the Industrial Court or even in the Writ Petition before the learned Single Judge about non compliance of the said statutory provision or any lapse on the part of the Management in complying with the said statutory provision in relation to the termination of services of the appellant. Only grievance which appears to have been made is of non compliance of the principles of natural justice, in the sense, that no enquiry was held even though show cause notice was issued. Indeed, the same arguments are sought to be canvassed even before us.

10. Merely because the Management chooses to issue show cause notice, it cannot be said that it has to follow necessarily by an enquiry when the Management decides to terminate the services of the employee in accordance with the provisions comprised under the Standing Orders and which contemplate for termination of the services without holding enquiry. In fact, in case of show cause notice having been given to the employee, he gets ample opportunity to put forth his defence before the Management takes any action in relation to his services. That itself shows adherence to the basic principles of natural justice on the part of the Management. Having given such opportunity to the

employee, there remains hardly any scope for the employee to contend that once the show cause notice is issued, it should necessarily be followed by an enquiry in the matter, particularly when the employer does not intend to take any punitive action against the employee. It cannot be disputed that simplicitor termination cannot be termed as a punitive action. Once the order of termination does not disclose any stigma having been attached to the employee while terminating his services, there is hardly any scope to contend that the termination is punitive unless the employee is able to establish by necessary evidence to be placed on record in support of such contention. Undisputedly, in the case in hand, the fact finding Court could not be satisfied by the appellant that the termination of service was either malafide or was for any extraneous reason. The record also discloses concurrent findings about the absence of malafide on the part of the employer while issuing order of termination. The Courts below have consistently held the order of termination being a termination simplicitor. In the background of these facts revealed from the record, there is no scope to contend that the impugned order either discloses any error or results in miscarriage of justice in any manner.

11. For the reasons stated above, therefore, there is absolutely no case for interference in the order and hence the Appeal is dismissed. There shall be no order as to costs.

[R.M.S. KHANDEPARKAR, J.]

[ANOOP V. MOHTA, J.]